



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

| DATE | COMM | ACTION |
|---------|------|-------------------------|
| 1/22/18 | SM | Favorable |
| 1/23/18 | JU | Favorable |
| 2/14/18 | ATD | Recommend: Favorable |
| | AP | |

January 22, 2018

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 40** – Senator Perry E. Thurston, Jr.
HB 6535 – Representative Wengay “Newt” Newton
Relief of Estate of Dr. Sherrill Lynn Aversa

SPECIAL MASTER’S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$650,000 FROM UNAPPROPRIATED TRUST FUNDS OF THE DEPARTMENT OF TRANSPORTATION FOR THE DEATH OF THE CLAIMANT IN AN AUTOMOBILE ACCIDENT CAUSED WHEN A LADDER FELL OFF A DEPARTMENT TRUCK.

CURRENT STATUS:

Before a prior legislative session, Judge Bram D. E. Canter, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

Judge Canter’s report was reissued for SB 30 (2012), the most recent version of the claim bill for which a report is available. The 2012 report is attached as an addendum to this document.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Thomas C. Cibula. My

responsibilities were to review the records relating to the claim bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge Canter, which if known at the hearing might have significantly altered the findings or recommendation in the report.

As part of my review of this matter, counsel for the parties were asked to describe any developments that have occurred since the original special master hearing. After reviewing the responses, I find that there are no new facts that would justify altering the original findings. Additionally, the 2012 claim bill on which Judge Canter's report is based is similar to the claim bill filed for the 2018 Legislative Session. The 2018 bill, however, incorporates several corrections recommended by Judge Canter. Therefore, the undersigned recommends that SB 40 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

| DATE | COMM | ACTION |
|---------|------|-----------------|
| 12/1/11 | SM | Fav/1 amendment |
| | | |
| | | |
| | | |

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2012)** – Senator Thad Altman
Relief of Sherrill Lynn Aversa

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$650,000 FROM UNAPPROPRIATED TRUST FUNDS OF THE DEPARTMENT OF TRANSPORTATION FOR THE DEATH OF THE CLAIMANT IN AN AUTOMOBILE ACCIDENT CAUSED WHEN A LADDER FELL OFF A DEPARTMENT TRUCK.

FINDINGS OF FACT:

On June 21, 1999, Dr. Sherrill Lynn Aversa, 33 years old, was traveling southbound on I-75 in Tampa in rush hour traffic. She was wearing her seatbelt. At the same time, a Department of Transportation (DOT) truck driven by DOT employee Domingo Alvarado was traveling northbound. A 12-foot extension ladder on the DOT truck was not well-secured and fell off the truck into the path of a vehicle driven by Roxann Hodge. Ms. Hodge veered sharply left to avoid the ladder and went into the median where she lost control of her vehicle. Ms. Hodge's car crossed the median into the southbound traffic and struck Dr. Aversa's car head-on. Dr. Aversa was killed instantly. Three other vehicles were also involved in the crash, but those drivers were not seriously injured.

When Mr. Alvarado realized that the ladder had fallen off his truck, he pulled off the roadway, backed up, and retrieved the ladder, which had come to a rest in the center northbound lane. Mr. Alvarado re-secured the ladder and then proceeded on his way. He said that he was unaware that his ladder caused a crash, although he acknowledged seeing smoke and commotion in the southbound lanes of I-75. Later that evening, Mr. Alvarado saw news coverage of the crash and called the Florida Highway Patrol to report his probable involvement.

Mr. Alvarado was cited for a violation of section 316.520, Florida Statutes, for failing to secure a load. DOT suspended him for four weeks without pay for violating DOT's policy regarding securing equipment on his truck.

Dr. Aversa was survived by her husband, Dr. Lee Crandall. They had no children. Dr. Aversa was an epidemiologist at the University of Miami Medical School and a leading researcher in the field of HIV/AIDS. An economist's report estimated that Dr. Aversa's economic damages (lost wages, etc.) were approximately \$2.6 million.

Dr. Crandall created a non-profit foundation to honor Dr. Aversa. The foundation awards scholarships to assist epidemiology students in completing their doctoral degrees. Dr. Crandall testified at the claim bill hearing that it is his intention to deposit most of the funds awarded from this claim bill into the foundation in order to endow the scholarships in perpetuity.

The other injured drivers settled with DOT for a total of \$50,000. That left \$150,000 under the sovereign immunity cap to pay Dr. Aversa's estate. DOT paid \$150,000 to Dr. Aversa's estate. All but \$727 was used to pay for attorney's fees and costs. Dr. Crandall received approximately \$110,000 from a life insurance policy, \$100,000 in underinsured motorist coverage, and \$10,000 in settlement proceeds from Ms. Hodge's insurer. Some of these funds were used to pay off Dr. Aversa's student loans and some will be transferred to the foundation once Dr. Aversa's estate is closed.

LITIGATION HISTORY:

Dr. Crandall, as husband and personal representative of Dr. Aversa's estate, filed an action for negligence against DOT in the circuit court for Hillsborough County in 2000. In May 2003, on the eve of trial, the parties entered into a stipulated settlement agreement wherein DOT agreed to pay Dr. Aversa's estate a total of \$800,000. DOT has already paid \$150,000, leaving \$650,000 to be paid by way of this claim bill. As a part of the settlement agreement, DOT agreed to cooperate and support the passage of a claim bill in the amount of \$650,000.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether DOT is liable in negligence for the death of the Claimant and, if so, whether the amount of the claim is reasonable.

Mr. Alvarado had a duty to secure the load to his truck pursuant to section 316.520, Florida Statutes, and DOT policy. His failure to do so was the direct and proximate cause of the crash that killed Dr. Aversa. Mr. Alvarado was an employee of DOT acting in the course and scope of his employment at the time of the crash. His negligence is therefore attributable to DOT.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. There is an agreement to pay the lobbyist's fee from the claim bill proceeds, which could conflict with the requirement in SB 30 that the lobbyist's fee must be paid from the 25 percent attorney's fees.

OTHER ISSUES:

DOT states that the claim should be paid from the State Transportation Fund.

There are some errors in SB 30. The bill states that the consent judgment was for \$797,500. The correct figure is \$800,000. The bill states that DOT paid \$100,000 to Dr. Aversa's estate, but DOT paid \$150,000.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 30 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Thad Altman
Debbie Brown, Interim Secretary of the Senate
Counsel of Record